



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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VIA FACSIMILE & REGULAR MAIL

John R. Jacus
Davis, Graham & Stubbs LLP
4410 Arapahoe Avenue
Suite 200
Boulder, CO 80303

Received
Office of Enforcement
JUN 26 2000
Compliance & Env. Justice

Re: Hecla Mining Co.,
Docket No. RCRA-8-99-06

Dear Mr. Jacus:

Enclosed please find a draft RCRA § 7003 Administrative Order on Consent ("§ 7003 Order). As we have discussed, this Order will supersede the Order Requiring Monitoring, Testing, Analysis and Reporting issued to Hecla Mining Company under Section 3013 of RCRA ("§ 3013 Order). The § 7003 Order incorporates the majority of the § 3013 Order and includes additional provisions that are specific to § 7003 orders. Please review the § 7003 Order and provide me with comments as soon as feasible. I would like to file the § 7003 Order with the Regional Hearing Clerk by July 14, 2000. EPA and BIA's comments on the workplans submitted under the § 3013 Order will be forthcoming shortly.

If you have any questions, I may be reached at 303-312-7054.

Sincerely,

Lauren C. Buehler

Lauren C. Buehler
Enforcement Attorney

cc: John Galbavy, Hecla Mining Co.
Linda Jacobson, 8ENF-T

Enclosure



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**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VIII**

IN THE MATTER OF:)	Docket No. RCRA-8-99-06
)	
Hecla Mining Co.)	
6500 Mineral Drive)	
Coeur D'Alene, ID 83815-8788)	Proceeding Under § 7003 of the
)	Resource Conservation and Recovery
EPA ID No. UTD982589848)	Act, as Amended, 42 U.S.C. § 6973
)	
Respondent.)	
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ADMINISTRATIVE ORDER ON CONSENT

WHEREAS, the Parties to this Administrative Order on Consent (the "Consent Order"), Hecla Mining Company and the United States Environmental Protection Agency, Region 8 ("EPA"), have agreed to the entry of this Consent Order, and have agreed that this Consent Order supersedes the Order Requiring Monitoring, Testing, Analysis and Reporting, Docket No. RCRA-8-99-06, issued under Section 3013 of the Resource Conservation and Recovery Act, ("RCRA") as amended, 42 U.S.C. § 6973(a) ("3013 Order"), it is therefore agreed and ordered that:

I. JURISDICTION

1. EPA has the authority to issue this Consent Order pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).
2. Hecla Mining Company ("Hecla" or "Respondent") agrees to undertake all actions required by the terms and conditions of this Consent Order. In any action by EPA or the United States to enforce the terms of this Consent Order, Respondent consents to and agrees not to contest the authority or jurisdiction of EPA to issue or enforce this Consent Order, and agrees not to contest the validity of this Consent Order or its terms. Respondent's participation in this Consent Order shall not constitute or be construed as an admission of liability or of EPA's findings or determinations contained in this Consent Order and is not an acknowledgment by Respondent that any past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment at the facility, except in a proceeding to enforce the terms of this Consent Order.

3. EPA maintains sole jurisdiction to implement and regulate the RCRA program within the exterior boundaries of the Shivwits Band of Paiute Indian Reservation.
4. This Consent Order is based upon the administrative record compiled by EPA and incorporated herein by reference. The record is available for review by the Respondent and the public at EPA's Regional Office at 999 18th St., Suite 500, Denver, CO 80202-2466.

II. PARTIES BOUND

5. The provisions of this Consent Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, contractors, successors, and assigns.
6. No change in ownership, corporate, or partnership status relating to the facility described in this Consent Order will in any way alter the status or responsibility of Respondent under this Consent Order. Any conveyance by Respondent of title, easement, or other interest in the facility described herein, or a portion of such interest, shall not affect Respondent's obligations under this Consent Order. Respondent shall be responsible and liable for any failure to carry out all activities required of Respondent by this Consent Order, irrespective of its use of employees, agents, contractors, or consultants to perform any such tasks.
7. Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Consent Order within seven (7) calendar days of the effective date of this Consent Order, or on the date of such retention, and Respondent shall condition all such contracts on compliance with the terms of this Consent Order.
8. Any documents transferring ownership and/or operations of the facility described herein from Respondent to a successor-in-interest shall include written notice of this Consent Order. In addition, Respondent shall, no less than thirty (30) days prior to transfer of ownership or operation of the facility, provide written notice of this Consent Order to its successor-in-interest, and written notice of said transfer of ownership and/or operation to EPA.

III. FACILITY DESCRIPTION

9. Respondent is a corporation organized under the laws of the State of Delaware, operating a waste facility ("facility") on tribal trust land within the exterior boundaries of the Shivwits Band of Paiute Indian Reservation.
10. Pursuant to an Amendment to Lease entered into between Hecla and the Shivwits Band of Paiute Indian Tribe on September 25, 1995, the Respondent leases and is responsible for a facility described approximately as: beginning at a point N 59°30' West, 1510 feet from the

Southeast Corner of Section 5, Township 42 South, Range 17 West, Salt Lake Base and Meridian, thence West, 560 feet, thence North 21°40' West, 415 feet; thence North 34°30' East, 250 feet; thence East, 526 feet; thence South 4°26'31" East, 590 feet to the point of beginning. The parcel of land lies within the SE1/4, the E1/2 SW1/4 and S1/2NE1/4, Section 5 and the NW1/4, NE1/4, Section 8, Township 42 South, Range 17 West, Salt Lake Base and Meridian, within the reservation of the Shivwits-Paiute Band Indian Tribe, within Washington County, Utah.

11. The facility is located on approximately 8.28 acres of the original site lease and principally consists of a 500-foot diameter pond ("Wastepile") and adjacent evaporation pond. The Wastepile contains an open leachate collection trench partially constructed around its southwest side that collects runoff and drains it into the evaporation pond also located on its southwest side.
12. Groundwater near the facility occurs in a confined limestone aquifer at a depth of 280 to 360 feet from the surface.
13. The groundwater has a total dissolved solids level in excess of 3000 mg/l which is unsuitable for potable use without treatment.
14. The facility is located on the eastern slope of the Beaver Dam Mountains in an area that drains generally to the east towards the Santa Clara River.
15. There are no streams on or adjacent to the facility; the nearest surface water is the Santa Clara River, a tributary of the Virgin River, approximately 2.5 miles away.
16. Runoff from the facility and Wastepile outside of the collection trenches drains in a northeasterly direction into a catchment basin currently maintained by OMG Americas, Inc.
17. Livestock grazing and mining have comprised the two major uses of land in and around the facility. Although no grazing leases presently exist on the facility, cattle have been observed in the immediate area.
18. Cattle use the catchment basin as a stock watering pond.

IV. FINDINGS OF FACT

Ownership and Operation History:

19. Beginning in March 1984 and continuing through 1988, the St. George Mining Company ("SGMC") constructed and operated a mill and tailings disposal facility on approximately 180 acres of tribal trust land located in Section 5 and Section 8, Township 42 South, Range 17

West, Salt Lake Base and Meridian, leased from the Shivwits Band of Paiute Indian Tribe (the "site"). The site consists of thirty (30) acres for production, seventy (70) acres for general storage and waste disposal and eighty (80) unused acres.

20. During SGMC's period of operation, SGMC produced and disposed of wastes in three asphalt-lined waste impoundments on the site, including the Wastepile (a/k/a Pond 2), and Ponds 1 and 3.
21. At the end of SGMC's operations, the waste containment system on site consisted of eight ponds containing various amounts of waste solution and solids.
22. Hecla purchased the site operation and lease from SGMC on or about March 19, 1989, for the purpose of continuing gallium and germanium extraction operations and producing zinc and silver by-product. As part of the proposed operations, Hecla planned to reprocess the wastes historically produced and disposed of on the property and utilize the existing waste areas for additional waste disposal. The waste impoundment facilities were designed to contain both existing waste and tailings produced from Hecla's operations.
23. Hecla submitted a Part A RCRA permit application in February 1990 to treat, store, and dispose of hazardous wastes as an existing facility. On May 8, 1990, Hecla provided EPA Region VIII with a summary of the facility's acid leaching operation, wherein Hecla concluded that because the acid leaching operation at the facility constituted beneficiation, any wastes generated from this process were not hazardous waste as defined by RCRA Subtitle C regulations. Following EPA's concurrence with Hecla's conclusion, Hecla withdrew its Part A application on November 13, 1990. EPA assigned Hecla EPA hazardous waste identification number UTD982589848.
24. Hecla produced germanium concentrate and cathode copper on the site from February to August 1990.
25. Hecla conducted cobalt sulfate operations on the site from November 1992 until it sold the operation and lease to OMG Americas, Inc. ("OMG"), a wholly owned subsidiary of Mooney Chemicals, Inc., in August 1995.
26. Between the period November 1992 and August 1995, Hecla placed wastes from the cobalt sulfate operation into the Wastepile.
27. At the time Hecla sold the operation and lease to OMG, Hecla entered into an Amendment to Lease with the Shivwits Band of Paiute on September 25, 1995, for the purpose of leasing and operating the Wastepile.
28. Hecla occupies the Wastepile for maintaining a tailings impoundment for permanent disposal

of wastes, including, but not limited to, mined ores, wastes, contaminated soils and such other wastes as were excavated and impounded from Hecla's industrial operations on and in the immediate vicinity of the site.

29. Pursuant to the Purchase and Sale Agreement ("Agreement") entered between Hecla and Mooney Chemicals, Inc., on or about August 2, 1995, Hecla agreed to reclaim and consolidate waste materials, old liners and excavated soils from areas on-site, including but not limited to the surge pond and pond 2A, the plant, office/shop and ore storage areas into the Wastepile prior to closing. Per this Agreement, Hecla was required to excavate all soils and waste materials above 80 parts per million for arsenic, lead and total petroleum hydrocarbons. These materials were placed untreated in the Wastepile.
30. Pursuant to the Agreement, Hecla agreed to move the waste materials contained in ponds 1A/B and 3A into the Wastepile by September 30, 1996. At the time of the Agreement, Hecla had already placed waste materials and old liners from pond 1C, 3B north and 3B south into the Wastepile.
31. Hecla currently employs one person to perform maintenance of the leachate collection trench and evaporation pond at the facility. Two corporate individuals are responsible for environmental compliance of the Wastepile.

Inspections, Investigations, Studies, Evaluations, and Analytical Information:

32. On November 16, 1998, EPA performed a compliance evaluation inspection ("inspection") ~~under RCRA and National Pollutant Discharge Elimination System~~ authorities at the Wastepile. This inspection included sample collection.
33. As a follow-up to the November 16th inspection and sampling results, EPA sent Hecla a letter dated January 15, 1999, requesting information relating to the processes conducted and wastes generated during the years of Hecla's operations; the cleanup and management of feedstock, sludges, liquids, and ponds as part of the transfer of ownership; the pond rehabilitation, waste removal and relocation and pond refurbishment of existing ponds; and the construction and closure of the Wastepile.
34. Hecla responded to EPA's January 15, 1999 information request in a letter and attachments dated February 12, 1999.
35. Based on review of the February 12, 1999, response and results of EPA sampling conducted during the November 1998 inspection, EPA issued Hecla a formal Information Request pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, and Section 308 of the Clean Water Act, 33 U.S.C. § 1318, on June 1, 1999.

36. EPA received Hecla's response to the formal Information Request on June 30, 1999. The truthfulness, accuracy, and completeness of this information and the information submitted in the February 12, 1999 letter and attachments was certified as accurate on June 28, 1999, by David Suhr, Idle Properties Manager, Hecla Mining Company.
37. In the Hecla response, the Respondent stated that at the time of the Hecla purchase of the SGMC operation the following amount of material was in each pond at the facility:

Pond	Contents	Estimated Amount
1A	not used	
1B	zinc sulfate	125 cu.yd.
1C	germanium operation waste	340 cu. yd.
2	leach tailings	56,800 cu. yd.
2A	leach tailings	23,272 cu. yd.
3A	iron sulfate	1,200 cu. yd.
3B north	iron sulfate	2,800 cu. yd.
3B south	iron sulfate	2,800 cu. yd.
surge pond		180 cu. yd.

38. Hecla sampled the SGMC wastes in the ponds listed in paragraph 37 above in 1988 prior to purchase of the facility from SGMC. The results of the analyses were submitted to EPA in the February 12, 1999 submittal and certified as accurate on June 28, 1999 by the Respondent. The samples were analyzed using the EP toxicity extraction to determine if the wastes were characteristically hazardous for toxicity. The Pond 1C solids exceeded the regulatory limit and exhibited the characteristics of EP Toxicity for arsenic and cadmium; the Pond 2A solids exhibited the characteristic of EP Toxicity for arsenic; the Pond 3A solids exhibited the characteristic of EP Toxicity for arsenic.
39. During the November 16, 1998 inspection, Hecla representative Gary Gamble stated that Pond 1C had never been used by Hecla. Mr. Gamble also stated that Pond 2A contained SGMC tailings only and that Ponds 3B North and 3B South were not used by Hecla and contained mining materials from SGMC. According to Mr. Gamble, Ponds 1A/B and 3A were the only ponds used for new waste disposal by Hecla.
40. In July 1995, Hecla began cleanup from its operations. Wastes from the various impoundments were consolidated by Hecla into the Wastepile. An estimated 30,000 cubic yards from Pond 1A/B, an estimated 10,000 cubic yards from Pond 3A, and the volumes stated in paragraph 37 for Ponds 1C, 2A, and 3A and the surge pond were consolidated into the Wastepile. An unspecified amount of unmilled ore at the facility when the gallium and germanium operation was shutdown in 1990 was also placed into the Wastepile.

41. Pond 1C material, germanium operation waste, had tested hazardous for arsenic and cadmium. Pond 2A materials, leach tailings, had tested hazardous for arsenic. The ponds had not been used or the waste treated since being sampled in 1988 and being excavated and consolidated into Pond 2 in 1995. Hecla placed the waste, without making a further waste determination into the Wastepile, a non-permitted, non-RCRA disposal pond.
42. Excavated soils from the ore storage area, plant, Pond 3B North, and Pond 3B South were placed untreated into the Wastepile. These soils contained arsenic at concentrations up to 7000 parts per million ("ppm"); lead at concentrations up to 20,000 ppm; cadmium at concentrations up to 640 ppm; and chromium at concentrations up to 380 ppm.
43. During years of operation, per Attachment J, Information Request Response No. 5, submitted in response to EPA's January 15, 1999 Information Request, "Ore Sources from the Mine During the GA/GE Operations, the Apex Mine ore reserves contained 0.44 to 1.53 percentage of arsenic." In the February 12, 1999 response, Respondent indicated that when the gallium and germanium operation was shutdown in 1990, unmilled ore at the facility was placed into Pond 2 during cleanup. This material which could contain 0.44 to 1.53 percentage of arsenic (or 4,400 to 15,300 ppm of arsenic) was not characterized or treated prior to disposal in Pond 2.
44. Hecla's February 12, 1999, response indicates that the acidic pond liquids remaining from the SGMC mining activities were neutralized with limestone and lime prior to relocation of the waste. Hecla did not identify which of the pond wastes were neutralized. Hecla also did not perform a waste determination on the neutralized material prior to placement in the Wastepile.
45. The Wastepile is partially capped with soil from construction of ponds 3B and 3C in a dome-shaped cover which over time has settled into a flat cover with localized depressions in which precipitation may pond. The cover is designed to control leachate collection of the wet waste materials by forcing the waste liquids out of the Wastepile into a small lined trench. The trench flows into a small lined evaporation pond adjacent to the Wastepile. There were no material specifications for compacting the pile. The liner for both the trench and evaporation pond is high-density polyethylene.
46. During the site inspection, the evaporation pond was full and there was standing water adjacent to the pond and the collection trench. There was little to no freeboard in the pond and trench. The berms of the collection ditch and evaporation pond needed repair.
47. EPA Inspectors observed uncontrolled seepage on the northeast side of the Wastepile saturating the ground and forming crystalized deposits on the ground and rocks down gradient of the seep during the site inspection.
48. The November 1998 EPA samples were collected at five facility locations: 1) the storm water

adjacent to the lined ditch, 2) the Hecla Wastepile lined ditch, 3) the Hecla evaporation basin, 4) the Hecla Wastepile crystal "seep" area on the east side of the Wastepile, and 5) storm water from the catchment basin used as a stock watering pond. The sample results detected arsenic, barium, cadmium, chromium, cobalt, copper, lead, nickel, selenium, silver, tungsten, and ammonia in the releases from the Wastepile.

49. The sample results for the EPA sample collected in November 1998 for the liquid sample collected in the seep area on the east side of the Wastepile detected arsenic being released in the seep at 5.82 ppm. Hecla sample results detected arsenic in the liquid, when analyzed for dissolved metals, at 5.9 ppm.
50. Based on the information submitted and the analytical results, the Respondent has managed solid and/or hazardous waste at the facility in such a manner that releases to the environment are occurring at and from the Facility.

Effects on Human Health or the Environment:

51. Hazardous constituents detected in EPA and/or Hecla samples include arsenic, barium, cadmium, chromium, cobalt, copper, lead, nickel, selenium, silver, tungsten, and ammonia. The following are effects on human health or the environment that may be caused by the constituents detected:
 - A. **Arsenic:** Arsenic is a known carcinogen, and a potential teratogenic agent. Its main ~~path of exposure to humans is through inhalation and dermal absorption.~~ Long term exposure can cause nerve and liver damage, narrowing of the blood vessels, and affect red blood cell production. Arsenic in the presence of acid may release a deadly gas, arsine. Arsenic has high acute toxicity to aquatic life, birds and land animals. It has a low solubility in water and is persistent in water, with a half-life of 200 days. Arsenic has high chronic toxicity to aquatic life, and is known to bioaccumulate in fish tissues.
 - B. **Cadmium:** High exposure to cadmium can cause acute health effects such as severe lung damage, fluid in the lungs, and in severe cases death. Cadmium is a probable cancer causing agent in humans, some studies link it to kidney and prostate cancer in humans, and it has been shown to cause lung and testes cancer in animals. It is a probable teratogen in humans, and may also damage the testes and affect the female reproductive cycle. Repeated low exposure can cause permanent kidney damage. Cadmium is highly persistent in water, with a half-life of greater than 200 days. Cadmium toxicity is influenced by water hardness, the harder the water the lower the toxicity. It has chronic and acute toxicity to aquatic life.

- C. Chromium: Acute exposure to chromium dust can cause "metal fume fever", which causes fevers, chills, and muscle aches. Chromium is highly persistent in water and has a half-life of greater than 200 days. Hexavalent chromium is soluble and more mobile in groundwater than the trivalent chromium. Hexavalent chromium has a high acute and chronic toxicity to aquatic life.
- D. Cobalt: Cobalt compounds may cause mutations in living cells, although it is not clear whether it is carcinogenic. Cobalt can damage the heart, causing heart failure. Long term exposure may damage the thyroid and liver. Repeated exposure can cause scarring of the lungs. Cobalt and its salts have high acute toxicity to aquatic life.
- E. Lead: Lead is a probable teratogen in humans. The primary routes of exposure are through inhalation and ingestion. Chronic health effects include decreased fertility in male and females; kidney and brain damage. Chronic lead exposure causes nerve and behavioral effects in humans and could cause similar effects in birds and animals. Water hardness controls the toxicity of lead to aquatic life, the softer the water the greater the toxicity. It has a high chronic toxicity to aquatic life.
- F. Mercury: Exposure to high levels can cause pulmonary edema and death. Mercury compounds are human teratogens and may be embryotoxic. Chronic exposure can lead to kidney and damage. Acute and chronic exposure can lead to tremors, loss of memory, hallucinations and psychosis. Mercury (II) and methyl mercury have high acute and chronic toxicity to aquatic life.
- G. Nickel: Nickel is a probable human carcinogen and may damage the developing fetus. High exposure through inhalation can lead to pulmonary edema and death. It can cause damage to the lungs, heart, liver and/or kidney. Nickel and its compounds have a high acute and chronic toxicity to aquatic life.
- H. Selenium: There are generally three types of selenium toxicity: acute selenosis, subacute selenosis and chronic selenosis. The acute condition results in unsteady walking, labored breathing, liver congestion, degeneration of the gastrointestinal tract, gallbladder and bladder, and erosion of the long bones. Subacute selenosis results in neurological dysfunction, including impaired vision, ataxia, disorientation, and respiratory distress. In grazing livestock, it is referred to as "blind stragglers". Chronic selenosis results in skin lesions, emaciation, hoof necrosis and loss in animals. In humans, chronic selenosis is characterized by fatigue, anorexia, gastroenteritis, enlarged spleen, and hepatic degeneration.
- I. Silver: The critical effect in humans ingesting silver is argyria, a permanent bluish-gray discoloration of the skin. Hepatic necrosis and ultrastructural changes of the liver have been induced by silver administration to vitamin E and/or selenium deficient rats.

V. CONCLUSIONS OF LAW

52. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
53. Respondent has handled "solid waste" within the meaning of Section 1004(27) of the Act, 42 U.S.C. § 6903(27).
54. Respondent has contributed and/or is contributing to the handling, storage, treatment, transportation or disposal of solid waste at the facility within the meaning of Section 7003 of RCRA, 42 U.S.C § 6973.
55. Respondent's contribution of solid waste to and/or handling of solid waste at the facility may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003.

VI. ORDER

56. Based on the above and on other information contained in the administrative record for this Consent Order, EPA has determined that the activities required by this Consent Order (the "work") are necessary to protect health or the environment. Respondent agrees to perform the work specified in this Consent Order in the manner and by the dates specified herein. All work undertaken pursuant to this Consent Order shall be performed in a manner consistent with this Consent Order, including all documents incorporated herein pursuant to this Consent Order, and all applicable laws.

VII. WORK TO BE PERFORMED

57. Respondent shall plan, implement, perform, and complete all actions required by this Consent Order in accordance with the standards, criteria, specifications, requirements, and schedules set forth herein, including schedules set forth in work plans submitted pursuant to this Consent Order or the 3013 Order, or as modified by mutual written agreement between the parties.
58. Within fifteen (15) calendar days of the effective date of this Consent Order, Respondent shall post signs along the perimeter of the Wastepile stating "Danger - Unauthorized Personnel Keep Out. This Area May Be Dangerous to Human Health." These signs must be legible from a distance of at least twenty five (25) feet from each sign and in both English and Spanish. The perimeter signs shall be placed at a maximum spacing of 200 feet around the perimeter of the Wastepile.
59. In order to restrict unauthorized access to the Wastepile, Respondent shall ensure that the

fence located around the perimeter of the Wastepile is locked at all times except when it is necessary to add or remove materials from the Wastepile.

60. Pursuant to the 3013 Order, Respondent was ordered to submit a written proposal to EPA for carrying out monitoring, testing, analysis, and reporting to ascertain the nature and extent of the hazard posed by any hazardous wastes that are present at or that may have been released from the Respondent's facility.
61. Respondent submitted such a proposal on January 20, 2000. The proposal was deemed to be incomplete by EPA.
62. As per this Consent Order, Respondent's January 20, 2000 proposal shall include the following:
 - A. A soil sampling and analysis work plan, including schedule and proposal for progress reports, to collect and analyze representative soil samples to determine the nature and extent of any soil contamination in and around the Wastepile, for metals, solvents and other organics, radioactive materials, and other constituents likely present in the waste material. The samples shall include near surface soils and extend to the full depth or extent of contamination. The plan shall include the number, location, depth of samples, the parameters of the analyses, and quality assurance measures.
 - B. A leachate and run-off sampling and analysis work plan, including schedule and proposal for progress reports, to determine the nature and extent of contaminated leachate and run-off flowing from the portions of the facility adjacent to and downstream from the Wastepile. This shall address the ditches and ponds constructed to collect Wastepile leachate and/or convey runoff away from the Wastepile, the catchment basin into which the run-off has been allowed to flow, and for all other areas onsite and offsite receiving leachate or runoff currently or historically from the Wastepile. The plan shall include the number, location, depth of samples, the parameters of the analyses, and quality assurance measures.
63. Each work plan must be designed to define the nature, location, extent, direction and rate of movement of any solid wastes or constituents which are present at or have been released from the facility. Each work plan must also document the procedures the Respondent shall use to conduct the investigations necessary: (1) to characterize the potential pathways of migration of solid waste and constituents; (2) characterize the sources of solid waste and/or constituent contamination; (3) define the degree and extent of solid waste and/or constituent contamination; and (4) identify actual or potential receptors.
64. Respondent hereby agrees to implement the work plans once approved, or modified and approved, by EPA. All work undertaken shall be performed in a manner consistent with EPA

Region VIII's Field Sampling Guide and the QAR5.

65. Respondent shall insure that laboratories used by Respondent for analyses perform such analyses according to the EPA methods included in "Test Methods for Evaluating Solid Waste" (SW-846) or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be proposed, Respondent shall submit all protocols to be used for analysis to EPA at least thirty (30) calendar days prior to the commencement of the analyses. Respondent shall also ensure that laboratories used by Respondent for analyses participate in a quality assurance/quality control ("QA/QC") program equivalent to that which is followed by EPA.
66. Based on work performed under the work plans described above, EPA may determine that additional investigation, analysis, and/or reporting is necessary to meet the purposes of this Consent Order. If EPA determines that Respondent shall perform additional work, EPA will notify Respondent in writing and specify the basis for its determination that additional work is necessary. Within fifteen (15) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. If required by EPA, Respondent shall submit for EPA approval a work plan for the additional work. EPA will specify the contents of such work plan. Such work plan shall be submitted by Respondent within thirty (30) days of receipt of EPA's determination that additional work is necessary, or according to an alternative schedule established by EPA.
67. Within forty-five (45) days of completion of the work plans required in paragraph 62 and any additional work required pursuant to paragraph 66, Respondent shall submit a Corrective Measures Work Plan for EPA approval that contains the results of the completed work, all analytical results and associated QA/QC, laboratory sheets, field notes, etc. The Corrective Measures Work Plan shall identify the extent of contaminated soils or sediment, both vertical and horizontal, exceeding accepted risk levels shown to be protective of a human health worker in an industrial use scenario or required regulatory levels. The Corrective Measures Work Plan shall also propose alternatives for the management, stabilization and/or removal of all contaminated soils or sediments exceeding these levels, and provide for sufficient financial assurance, as defined at 40 C.F.R. § 264.143, for each proposed alternative. The proposed alternatives must include measures to ensure appropriate management of wastes and wastestream residues during implementation of said alternatives, adhere to accepted engineering practices, and be constructed or conducted to comply with all RCRA requirements.
68. The Corrective Measures Work Plan shall be reviewed by EPA per the requirements at Section VIII. The financial assurance mechanism must be in place fifteen (15) days prior to implementation of the Corrective Measures Work Plan.
69. Respondent shall submit a written progress report to EPA concerning actions undertaken

pursuant to the Consent Order due on the 28th day of each month after the date of receipt of EPA's approval of the work plans and continuing until all tasks required by the Consent Order have been completed. These reports shall include the following information: a) activities accomplished and progress made during the reporting period; b) problems and resolved solutions; c) sampling/laboratory activities, samples collection, analyses requested, and analytical results received; d) personnel or schedule changes; e) activities planned for the next reporting period; and f) estimated or actual costs for the activities planned.

70. Within fourteen (14) days of the completion of all tasks required by the Corrective Measures Work Plan, Respondent shall submit for EPA review and approval a Completion Report summarizing the actions taken to comply with the Corrective Measures Work Plan. The Completion Report shall have accompanying appendices containing all relevant documentation generated, including analytical data, waste determinations, manifests, engineering designs, invoices or purchase orders, bills, contracts, receipts, and canceled checks.
71. The written proposal and all reports or documents required to be submitted under this Consent Order shall be mailed to the following EPA representatives:

Linda Jacobson
U.S. Environmental Protection Agency
Region 8, 8ENF-T
999 18th Street, Suite 500
Denver, CO 80202-2466

72. Copies of the written proposal and all reports or documents required to be submitted under this Consent Order shall be simultaneously mailed to the following Tribal and BIA representatives:

Glenn Rogers, Chairman
Shivwits Band of Paiute Indian Tribe
P.O. Box 448
Santa Clara, UT 84765

John Krause
Bureau of Indian Affairs Phoenix Area Office
U.S. Department of Interior
P.O. Box 10
Phoenix, AZ 85001

Deborah Hamlin,
BIA Southern Paiute Field Station, Branch of Natural Resources

P.O. Box 720
St. George, UT 84771

VIII. SUBMISSIONS / AGENCY REVIEW

73. EPA will review all plans, reports, or other submittals required under this Consent Order. EPA may: (a) approve the submission; (b) approve the submission with modifications; (c) disapprove the submission and direct Respondent to re-submit the document after incorporating EPA's comments; or (d) disapprove the submission and assume responsibility for performing all or any part of the work. As used in this Consent Order, the terms "approval by EPA," "EPA approval," or a similar term means the action described in (a) or (b) of this paragraph.
74. Prior to approval in writing, or approval with modifications in writing, no plan, report, or other submittal shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA representatives will not constitute approval, nor shall any oral approval or oral assurance of approval be considered as binding.
75. Upon receipt of a notice of disapproval in paragraph 73(c) above or a request for a modification, Respondent shall, within fifteen (15) days, or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan, report, schedule, other item for approval. Notwithstanding the notice of disapproval, or approval with modifications, Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.
76. Within thirty (30) days following EPA approval, or approval with modifications, of the plan, report, or other submittal, Respondent shall implement the approved document.
77. All plans, reports, and/or other submittals required by this Consent Order are, upon approval or approval with modifications by EPA, incorporated into this Consent Order as if fully set forth in the text herein. Any noncompliance with such EPA-approved plans, reports, specifications, schedules, and attachments shall be noncompliance with this Consent Order. Oral advice or approvals given by EPA representatives shall not relieve Respondent of its obligation to obtain any formal, written approvals required by this Consent Order.
78. In all instances which this Consent Order requires written submissions to EPA, each submission must be accompanied by the following certification signed by a "responsible official": Under penalty of law, I certify to the best of my knowledge, information, and belief, after appropriate inquiries of all relevant persons involved in the preparation of this submission, that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a

fine and imprisonment for knowing violations.

For the purpose of this certification, a "responsible official" means a person in charge of a principal facility function, or any other person who performs similar decision-making functions for the facility.

IX. PROJECT COORDINATORS

79. EPA hereby designates as its Project Coordinator:

Linda Jacobson
U.S. Environmental Protection Agency
Region 8, 8ENF-T
999 18th Street, Suite 500
Denver, CO 80202-2466

80. Within ten (10) calendar days of Respondent's receipt of this Consent Order, Respondent shall designate a Project Coordinator and submit the designated Project Coordinator's name, address, and telephone number in writing to EPA.
81. Each Project Coordinator shall, on behalf of the party that designated that Project Coordinator, oversee the implementation of this Consent Order and function as the principal project contact.
82. Respondent shall provide EPA with a written notice of any change in its Project Coordinator. Such notice shall be provided at least seven (7) calendar days prior to the change in Project Coordinator.

X. THREATS TO PUBLIC HEALTH OR THE ENVIRONMENT

83. If EPA determines that activities in compliance or noncompliance with this Consent Order have caused or may cause a release of hazardous waste or hazardous constituents, or a threat to the public health or to the environment, EPA may require that Respondent stop further implementation of this Consent Order for such a period of time as may be needed to abate any such release or threat and/or undertake any action which EPA determines is necessary to abate such release or threat; and may require Respondent to resume implementation of this Consent Order.

XI. SAMPLING AND DOCUMENT AVAILABILITY

84. Respondent shall submit to EPA upon request, the results of all sampling and/or tests or other data generated by, or on behalf of, the Respondent in implementing the requirements of this

Consent Order.

XII. ACCESS

85. Respondent shall provide access at all reasonable times to the facility and to all records and documentation relating to conditions at the facility and the activities conducted pursuant to this Consent Order to EPA and its employees, contractors, agents, consultants, and representatives. These individuals shall be permitted to move freely at the facility in order to conduct activities which EPA determines to be necessary.
86. To the extent that activities required by this Consent Order, or by any approved work plans prepared pursuant hereto, must be done on property not owned or controlled by Respondent, Respondent will use its best efforts to obtain site access agreements in a timely manner from the present owners of such property. Best efforts as used in this paragraph shall include the payment of reasonable compensation in consideration of granting access. Respondent shall ensure that EPA's Project Coordinator has a copy of any access agreements.
87. Nothing in this Consent Order limits or otherwise affects EPA's right of access and entry pursuant to applicable law, including RCRA and the Comprehensive Environmental Response, Compensation and Liability Act.
88. Respondent shall notify the EPA, Tribal and BIA representatives identified in paragraphs 71 and 72 in writing at least ten (10) calendar days before engaging in any field activities at the facility, including but not limited to sampling, remediation, well-drilling, and installation of equipment. Respondent shall allow EPA, Tribal or BIA representatives to be on-site at the time of any field activities.
89. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to take split and/or duplicate samples of all samples collected by Respondent pursuant to this Consent Order.

XIII. RECORD PRESERVATION

90. Respondent shall retain, during the pendency of this Consent Order and for a minimum of five (5) years after its termination, a copy of all data, records, and documents now in its possession or control, or in the possession or control of its contractors, subcontractors, representatives, or which come into the possession or control of the Respondent, its contractors, subcontractors, or representatives, which relate in any way to this Consent Order. Respondent shall notify EPA, in writing, at least ninety (90) days in advance of the destruction of any such records, and shall provide EPA with the opportunity to take possession of any such records. Such written notification shall reference the caption, docket number and date of issuance of this Consent Order and shall be addressed to:

Sharon Kercher, Director
Technical Enforcement Program
U.S. EPA Region 8, 8ENF-T
999 18th Street, Suite 500
Denver, CO 80202-2466

In addition, Respondent shall provide data, records and documents retained under this Section at any time before the expiration of the five-year period at the written request of EPA.

XIV. INFORMATION SUBMITTED TO EPA

91. Any information that Respondent is required to provide or maintain pursuant to this Consent Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq.
92. Respondent may assert a business confidentiality claim in the manner described in 40 C.F.R. § 2.203(b) covering all or part of any information submitted to EPA pursuant to this Consent Order. Any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made in accordance with 40 C.F.R. § 2.204(e)(4). Information submitted for which Respondent has asserted a claim of confidentiality as specified above shall be disclosed by EPA only to the extent and manner permitted by 40 C.F.R. Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to the Respondent.

XV. RESERVATION OF RIGHTS

93. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Respondent pursuant to this Consent Order, and to order that Respondent perform additional tasks.
94. Nothing in this Consent Order shall limit the information gathering, access, and response authority of the United States under any other applicable law, nor shall it limit the authority of EPA to issue additional orders to Respondent as may be necessary. Nothing herein shall limit the power and authority of EPA to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the facility. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Consent Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), or any other applicable law. Nothing, other than the agreed upon terms of this

Consent Order, shall preclude the Respondent from exercising any of its rights under the law.

95. This Consent Order shall not be construed as a waiver or limitation of any rights, remedies, powers and/or authorities which EPA has under the RCRA or any other applicable law.
96. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any applicable laws and regulations and with any of the requirements of this Order, including but not limited to, the right to disapprove of work performed by Respondent, to request that Respondent perform additional tasks, and the right to perform any portion of the work herein.

XVI. FORCE MAJEURE

97. Respondent agrees to perform all requirements under this Consent Order within the time limits established under this Consent Order, unless the performance is delayed by a force majeure event. For purposes of this Consent Order, a force majeure event is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by the Respondent, including but not limited to their contractors and subcontractors, that delays or prevents performance of any obligation under this Consent Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance. Nothing in this Consent Order precludes the parties from extending any of the time frames by mutual agreement; however, such agreement must be memorialized in writing prior to the due dates.
98. Respondent shall notify EPA orally within 24 hours after the event, and in writing within five days after Respondent becomes or should have become aware of events which constitute a force majeure event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall waive any claim of force majeure by Respondent.
99. If EPA determines a delay in performance of a requirement under this Consent Order is or was attributable to a force majeure event, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Consent Order which are not directly affected by the force majeure event.

XVII. PUBLIC COMMENT

100. Pursuant to Section 7003(d) of RCRA, 42 U.S.C. § 6973(d), EPA will announce the availability of this Consent Order to the public for review and comment. EPA will accept comments from the public for a period of thirty (30) calendar days after such announcement. If sufficient interest warrants, as determined by EPA, a public meeting will be held. At the end of the comment period, EPA will review all comments received during the comment period and/or at any public meeting. EPA will forward to Respondent a copy of all such comments and EPA's written response to such comments, whereupon Respondent shall have seven (7) days to submit a response to EPA. EPA shall then either:

A. Determine that the Consent Order should be made finally effective in its present form, and entered with the Regional Hearing Clerk, in which case Respondent shall be notified; or

B. Determine that modification of the Consent Order is necessary, in which case Respondent shall be informed as to the nature of all required changes. If Respondent agrees to the modifications, the Consent Order shall be so modified, signed by the parties, and entered with the Regional Hearing Clerk.

XVIII. OTHER APPLICABLE LAWS

101. All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, tribal, and local laws, regulations, permits, and ordinances.
102. Compliance by Respondent with the terms of this Consent Order shall not relieve Respondent of its obligations to comply with RCRA, or any other applicable federal, tribal, or local laws, regulations, permits, and ordinances.
103. This Consent Order is not and shall not be interpreted to be a permit, or as a ruling or a determination of any issue related to a permit under federal, tribal or local law. This Consent Order shall not in any way affect Respondent's obligation, if any, to secure such a permit, nor shall this Consent Order be interpreted in any way to affect or waive any of the conditions or requirements that may be imposed as conditions of such permit or of Respondent's right to appeal any conditions of such permit. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XIX. OTHER CLAIMS

104. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership,

or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous waste constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or migrating from the facility.

105. By issuance of this Consent Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts of omissions of Respondent or its agents, contractors, subcontractors or other representatives.
106. Neither the United States nor EPA shall be a party or be held out as a party to any contact entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Consent Order.

XX. SUBSEQUENT MODIFICATION OF CONSENT ORDER

107. Except as provided in paragraph 108, this Consent Order may only be modified by written amendment signed by EPA Region VIII Technical and Legal Enforcement Supervisors.
108. Modifications in any schedule adopted pursuant to this Consent Order may be made in writing by EPA.
109. No informal advice, guidance, suggestions, or comments by EPA shall be construed to modify the requirements of this Consent Order. Routine communications exchanged verbally, in person, by telephone or by electronic mail, between the parties to facilitate the orderly conduct of work contemplated by this Consent Order shall not alter or waive any rights and/or obligations of the parties under this Consent Order.

XXI. STATEMENT OF SEVERABILITY

110. If any provision or authority of this Consent Order, or the application of this Consent Order to any party or circumstances, is held by any judicial or administrative authority to be invalid, the application of such provisions to other Parties or circumstances and the remainder of the Consent Order shall not be affected thereby.

XXII. TERMINATION AND SATISFACTION

111. Respondent may seek termination of this Consent Order by submitting to EPA a written document which indicates Respondent's compliance with all requirements of this Consent Order, and the associated dates of approval correspondence from EPA. The provisions of this Consent Order shall be deemed satisfied upon Respondent's and EPA's execution of

an "Acknowledgment of Termination and Agreement for Record Preservation and Reservation of Rights" (Acknowledgment). The Acknowledgment shall specify that Respondent has demonstrated to the satisfaction of EPA that the terms of this Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, have been satisfactorily completed.

112. The provisions of this Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated to the satisfaction of EPA that the terms of the Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, have been satisfactorily completed. This notice shall not, however, terminate Respondent's obligations to comply with any continuing obligations hereunder, including without limitation, Section XIII (Record Preservation) and Section XVIII (Other Applicable Laws).

XXIII. FAILURE TO COMPLY

113. For each day, or portion thereof, that Respondent fails to perform fully any requirement of the Consent Order in accordance with the schedule established pursuant to the Order, Respondent shall be liable as follows:

A. For failure to submit an amended workplan, Corrective Measures Work Plan, or Completion Report, Respondent shall pay a stipulated penalty of \$5000 per document for each late day until the documents are submitted.

B. For failure to submit a progress report, Respondent shall pay a stipulated penalty of \$1000 for each monthly report.

C. For failure to provide the notification required in this Consent Order, Respondent shall pay a stipulated penalty of \$5000 for each day the notification is late.

D. For "work" that has not been completed in a manner satisfactory to EPA, Respondent shall pay a stipulated penalty of \$5000 for each day such failure remains uncured.

E. The determinations of whether the "work" has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the "Work" shall be in the sole discretion of EPA.

F. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.

G. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of

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written demand by EPA for such penalties.

H. Respondent shall pay stipulated penalties by submitting a cashier's or certified check, to the order of the "treasurer, United States of America," to :

U.S. EPA, Region VIII
(Regional Hearing Clerk)
P.O. Box 360859M
Pittsburgh, PA 15251

Respondent shall provide copies of the checks to:

Regional Hearing Clerk
U.S. EPA, Region VIII
999 18th Street, Suite 500
Denver, CO 80202-2466

and

Lauren Buehler, 8ENF-L
Legal Enforcement Program
U.S. EPA, Region VIII
999 18th Street, Suite 500
Denver, CO 80202-2466

I. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Treasury tax and loan rate is in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a penalty charge of twelve (12) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid in accordance with 4 C.F.R. § 102.13(d) and (e).

XXIV. EFFECTIVE DATE

113. This Consent Order shall become effective on the date it is issued by EPA.
114. Modifications made by EPA to this Consent Order are effective on the date such modification is filed with the Region Hearing Clerk, so long as Respondent is sent a copy

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by certified mail or has hand delivered to it a copy of the modification as expeditiously as possible after the modification is filed with the Regional Hearing Clerk.

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IN THE MATTER OF HECLA MINING COMPANY
Docket No. RCRA- 8-99-06

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION VIII**
Complainant

By:
Sharon Kercher, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency Region VIII

Date

By:
Michael T. Risner, Director
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency Region VIII

Date

By:
Lauren Buehler, Attorney
Legal Enforcement Program

Date

RESPONDENT, Hecla Mining Co.

By:
Authorized Representative
for Respondent

Date

Type or Print Name of Signatory